

TAX POLICY DIRECTIVE #11

JANUARY 2003

(Replaces Directive #11 dated August 1999)

PURPOSE: Tax Policy Directives are intended to provide the general public with information concerning the Department's official position in regard to a specific issue. These directives may be relied upon by taxpayers until superseded by another policy directive, a change in statute or regulation, or a court decision that would render the policy directive void.

SUBJECT: Other Tobacco Products Tax

REFERENCE: IC 6-7-2

INTRODUCTION:

The purpose of this tax policy directive is to provide interpretation of the Other Tobacco Products Tax as it applies to the wholesale price of tobacco products, and who is a tobacco distributor that is liable for the tax. This directive applies to other tobacco product distributors as defined in IC 6-7-2-2.

DISCUSSION:

The other tobacco products tax is imposed on tobacco distributors per IC 6-7-2-7, which reads:

A tax is imposed on the distribution of tobacco products in Indiana at the rate of eighteen percent (18%) of the wholesale price of the tobacco products. The distributor of the tobacco products is liable for the tax. The tax is imposed at the time the distributor:

- (1) brings or causes tobacco products to be brought into Indiana for distribution;
- (2) manufactures tobacco products in Indiana for distribution; or
- (3) transports tobacco products to retail dealers in Indiana for resale by those retail dealers.

An unlicensed wholesaler/retailer purchasing tobacco products through a catalogue or other media from a person not licensed as an Indiana distributor must register as a distributor and pay the eighteen percent (18%) tax on the wholesale price of the other tobacco products. A wholesaler/retailer failing to register and comply with the law commits a Class B misdemeanor. However, the offense is a Class D felony if it is committed with intent to evade the tax imposed or to defraud the state.

The term "wholesale price" is defined at IC 6-7-2-6: "As used in this chapter, 'wholesale price' means the price at which the manufacturer of the tobacco products sells tobacco products to distributors, excluding any discount or other reduction."

The Department's position is that temporary reduction or discounts for the purpose of promoting certain tobacco products are deductible from the original price in determining the "wholesale price" of tobacco products if the finished tobacco product(s) container is prepackaged indicating a monetary discount. The "wholesale price" for other tobacco products prepackaged in multiple units is the actual price paid and not on an imputed cost based on the manufacturer's price per single unit. Purchase discounts, quantity discounts, trade discounts, or any other reduction are not deductible when determining the "wholesale price" of tobacco products for purposes of imposing the Other Tobacco Products Tax.

A manufacturer, importer, broker, or shipper of other tobacco products into Indiana for the purpose of giving such products away for any type of promotional purpose must pay the tax due on all such products. In applying the Other Tobacco Products Tax to samples, the "wholesale price" is the standard price charged for the single unit tobacco product before deduction of any discount, including temporary promotional discounts.

A handwritten signature in cursive script, reading "Kenneth L. Miller".

Kenneth L. Miller
Commissioner